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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ROWMOND BROWN,

Defendant and Appellant.

A157563

(Alameda County
Super. Ct. No. 3295123)

Rowmond Brown (defendant) appeals an order denying his petition for resentencing under Penal Code section 1170.95.¹ His counsel has filed an opening brief raising no issues and asking this court for an independent review of the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant has been apprised of his right to personally file a supplemental brief, but he has not done so.

Defendant's case first came before this court in his appeal from his conviction of first degree murder. (§ 187, subd. (a); *People v. Brown* (Mar. 30, 2011, A118569) [nonpub. opn.].) He was sentenced to a term of 25 to years to life, with an additional year for a firearm enhancement. (§ 12022, subd. (a)(1).)

¹ All statutory references are to the Penal Code.

As explained in this division’s opinion in case No. A118569, Thomas Anderson was shot to death on a street in Oakland in 2003. The evidence showed defendant was driving a car in which his brother Delvond Brown (Delvond), Erick Richardson, and Robert Rubio were passengers on the day of the murder. As they drove, defendant’s car collided and became entangled with another car; one of the passengers in defendant’s car pointed a gun at the driver of the other car and threatened to shoot her. Defendant backed the car up and drove down the street. At least two of the young men got out of the car and shot Anderson, then got back into the car, and the group drove away.

Two hours previously, defendant and Delvond had been present when another man was killed in similar circumstances, with the same guns that were used to kill Anderson.

We affirmed the convictions of defendant, Rubio, Richardson, and Delvond in 2011. (*People v. Brown* (Mar. 30, 2011, A118569) [nonpub. opn.])

In 2018, Senate Bill No. 1437 (2017–2018 Reg. Sess.) (SB 1437) was enacted to amend the felony murder rule and the natural and probable consequences doctrine.² (Stats. 2018, ch. 1015, § 1, subd. (f).) As amended by SB 1437, section 189 limits felony murder to circumstances in which the

² Prior to the enactment of SB 1437, the felony murder rule and the natural and probable consequences allowed a person to be convicted of murder without proof of malice. (*People v. Lee* (2020) 49 Cal.App.5th 254, 260.) Under the felony murder rule, a defendant could be convicted of murder when the defendant or an accomplice killed someone while committing or attempting to commit an inherently dangerous felony. (*Id.* at p. 261.) “[U]nder the natural and probable consequences doctrine, an aider and abettor is guilty not only of the intended crime, but also “for any other offense that was a ‘natural and probable consequence’ of the crime aided and abetted.” ’” (*People v. Williams* (2015) 61 Cal.4th 1244, 1268; accord, *Lee*, at p. 261.)

person was the actual killer; the person, with intent to kill, aided and abetted the murder; or the person was a major participant in the underlying felony and acted with reckless indifference to human life. (§ 189, subd. (e).) The bill also added section 1170.95, which allows a person whose felony murder conviction is final, but who could not have been convicted under the felony murder rule as amended, to petition to have the conviction vacated. (§ 1170.95, subd. (a); *People v. Ramirez* (2019) 41 Cal.App.5th 923, 927.)

In January 2019, Brown filed a petition for resentencing under section 1170.95, alleging he was convicted of murder pursuant to the felony murder rule or the natural and probable consequences doctrine. The District Attorney opposed the motion on the ground Brown was instead convicted as an aider and abettor to the murder, and was thus ineligible for the benefit of SB 1437.

The trial court appointed counsel for defendant, who submitted a response indicating that, at trial, the prosecutor did not argue for conviction based on the natural and probable consequences doctrine; rather, he argued that defendant knew the intent of the actual shooters and was guilty as an aider and abettor. And, counsel pointed out, there were no charged or uncharged target crimes to support a theory of felony murder.

Defendant submitted a pro se statement in support of his petition. According to defendant, he and the others went to buy some marijuana on the day of the killing. When Delvond got out of the car, he saw Anderson and decided to fight him because of a prior dispute. Defendant did not know anyone was going to shoot Anderson.

The trial court denied the petition for resentencing, concluding defendant had not made a prima facie case he was entitled to relief under section 1170.95. The court indicated it had read the jury instructions, that

the jury was not instructed on a theory of either felony murder or natural and probable consequences, and that the case did not involve a robbery or any other underlying offense. (See *People v. Law* (2020) 48 Cal.App.5th 811, 820–821, review granted July 8, 2020, S262490 [court properly looked at appellate opinion and judgment of conviction, including jury instructions, in ruling on section 1170.95 motion].)

We have reviewed the jury instructions and the arguments of counsel at trial, which show unambiguously that the prosecutor’s theory of defendant’s guilt was that he knowingly and intentionally aided and abetted the murder of Anderson. Nothing in defendant’s pro se statement indicates his guilt was predicated on the commission of another crime so as to fall within a theory encompassed by SB 1437.

There are no meritorious issues to be argued.

DISPOSITION

The order denying defendant’s petition for resentencing is affirmed.

TUCHER, J.

WE CONCUR:

POLLAK, P. J.

STREETER, J.